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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.L., a Person Coming Under the
Juvenile Court Law.

B214112

(Los Angeles County
Super. Ct. No. CK60464)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANA L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Stephen Marpet, Court Commissioner. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Senior Associate County Counsel, for Plaintiff and Respondent.

Ana L. (Mother) appeals from the juvenile court's orders terminating her parental rights and selecting adoption as the permanent plan for her daughter, M.L. (born July 2005 and hereinafter referred to as Ma.). She contends the court erred by failing to apply the exception to terminating parental rights contained in Welfare and Institutions Code section 366.26, subdivision (c)(1)(A) and by ordering adoption as the permanent plan without the appropriate assessment report. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2005, the Los Angeles County Department of Children and Family Services (the Department) filed a petition pursuant to Welfare and Institutions Code section 300,¹ alleging that Mother had a history of drug abuse and an episode of psychotic behavior which placed Ma. at risk of suffering physical or emotional harm.² Ma. was placed with the maternal grandparents.

The initial social worker reports indicated that Mother had admitted to using drugs in the past, while she was pregnant with Ma., and while she was breast-feeding the child. Mother suffered from depression and had been hospitalized several times as a result. Father did not live with Mother.

After Ma. was placed with the maternal grandparents, Mother was granted monitored visits. Even though Ma. lived with the maternal grandparents, the paternal grandparents had unmonitored weekend visits with the child and took care of her on days when the maternal grandparents were unavailable.

In July 2006, Mother gave birth to another daughter, Mi.L. (Mi.) Because Mother had tested positive for drugs, missed numerous tests, and provided a diluted sample while pregnant with Mi., the Department took custody of Mi. and filed a petition on her behalf.

¹ All further statutory references are to the Welfare and Institutions Code.

² The petition also alleged that Paul L. (Father) had a history of substance abuse. He is not a party to this appeal.

The child was placed with the paternal grandparents. Both sets of grandparents expressed a desire to adopt the children and the Department initiated home studies.

In November 2006, the Department reported that the maternal grandparents had allowed Mother to live in their home in violation of the court's order that Mother and Ma. not reside in the same location.

In August 2007, Ma. was living with the maternal grandparents and Mi. was residing at the paternal grandparents' home. The social worker reported that the paternal grandparents had begun proceedings to adopt a child from the Philippines. The adoption could not be finalized until the paternal grandmother had resided in the Philippines for two years. The social worker recommended that Ma. and Mi. be adopted by the maternal grandparents, noting that "No adoption [by the paternal grandparents] can commence if an International adoption is in progress." Mi. was placed with the maternal grandparents. The paternal grandparents continued to regularly visit the children and care for them when the maternal grandparents needed assistance.

In January 2008, the juvenile court awarded the maternal grandparents permanent guardianship of Ma. and terminated jurisdiction. The court retained jurisdiction over Mi., who remained in the maternal grandparents' care.

In March 2008, the maternal grandparents left Mi. with Mother in their home without supervision. When the grandparents returned, Mi. was unconscious. The child was taken to the hospital, where she died. The cause of death was a blunt force injury. Mother was charged with murder and incarcerated. The Department filed a petition alleging that the maternal grandparents' act of leaving Mi. with Mother caused Mi. to suffer physical harm and placed Ma. at risk of suffering similar harm. Ma. was placed with the paternal grandparents.

In September 2008, the Department filed a section 388 petition, seeking to terminate the maternal grandparents' guardianship of Ma. It also filed a section 342 petition against Mother, alleging she was responsible for Mi.'s death. The court sustained both petitions and set the matter for a section 366.26 hearing.

At the January 2009 section 366.26 hearing, the Department recommended that Mother's parental rights be terminated. Mother objected and claimed she had a strong bond and relationship with Ma. Ma.'s counsel objected because the Department had not started the paternal grandparents' home study. Father joined; however, he stated he was not opposed to his daughter being adopted by the paternal grandparents. The court terminated Mother's parental rights, found Ma. adoptable, and selected adoption as the permanent plan.

DISCUSSION

I. The Application of Section 366.26, Subdivision (c)(1)(A)

Mother contends the court erred by terminating her parental rights because the exception in section 366.26, subdivision (c)(1)(A) applied. That subdivision provides that if a court finds a child is likely to be adopted, the court shall terminate parental rights unless, "[t]he child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child." Mother claims the paternal grandparents' planned adoption of a child from the Philippines is a legal impediment to their adopting Ma. and it is undisputed that Ma. would suffer severe emotional harm if she were forced to leave the paternal grandparents' home.

We note that Mother failed to raise this objection in the trial court and forfeited her right to present the argument here. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) In any event, her contention lacks merit. Even assuming the adoption of a child in the Philippines serves as a legal bar to the paternal grandparents' adoption of Ma. (Mother has cited no legal authority for that assertion), there is nothing in the record suggesting that at the time of the section 366.26 hearing, the foreign adoption was still being

contemplated. The last mention of the grandparents' plan was in July 2007. Since that time, they lost their granddaughter Mi. and received custody of Ma. Mother concedes that the grandparents have cared for Ma. throughout her life and that the grandparents and child are extremely attached to one another. In fact, Mother argues Ma. would be devastated if she were forced to leave her grandparents' home. From this, we conclude the likelihood the grandparents would allow Ma. to be taken from their home in order to pursue a foreign adoption that Mother acknowledges would take years to finalize is nil. Mother failed to carry her burden to show that the exception contained in section 366.26, subdivision (c)(1)(A) applied here. (See *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809 [“Once the court determines a child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the four exceptions listed in section 366.26, subdivision (c)(1).”].)

II. The Department's Adoption Assessment Report to the Court

Mother asserts the Department's adoption assessment was severely lacking, citing the fact that at the section 366.26 hearing, it had not started the paternal grandparents' home study. As she acknowledges in her opening brief, Ma.'s counsel objected to the lack of an adequate adoption assessment. Mother did not. Having failed to challenge the adequacy of the Department's adoption assessment in the trial court, Mother has forfeited the contention on appeal. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1317 [appellants barred from attacking the adequacy of the social service agency's adoption assessment report on appeal when they failed to object on that ground in the juvenile court].)

Mother also argues the trial court had no information to allow it to conclude that Ma. was adoptable. We recognize that she may challenge the sufficiency of the evidence to support a finding of adoptability despite her failure to raise the objection in the trial court. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 622.) The problem with Mother's claim is that she does not dispute that Ma. is generally adoptable. Indeed, in her reply brief she notes that the Department discussed at length in its brief “the fact that [Ma.] was

a healthy attractive child, and thus generally adoptable. In her opening brief, [Mother] herself references [Ma.'s] positive characteristics. That issue is not at all in dispute.”

We find the case of *In re Dakota S.* (2000) 85 Cal.App.4th 494 instructive. There, the mother contended that the trial court’s guardianship order had to be reversed because the Department of Health and Human Services failed to prepare a statutorily required preliminary assessment report. The appellate panel concluded “that the failure to provide the juvenile court with a preliminary assessment report is subject to the harmless error provision of our state Constitution (Cal. Const., art. VI, § 13) when the court received, in other forms, the information that would have been contained in the preliminary assessment.” (*Id.* at p. 503.)

Here, although an adoption assessment did not provide the court with any information regarding Ma.’s adoptability, the many reports filed in the case, including one prepared for the section 366.26 hearing, informed the court that Ma. was healthy, well-adjusted, and lacked any physical or emotional disabilities. As we have discussed, Mother does not dispute that assessment. The Department’s failure to start the grandparents’ home study did not prevent the court from receiving sufficient information to determine whether Ma. was adoptable. Any error was harmless.

DISPOSITION

The orders of the juvenile court are affirmed.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.